**Exploring the consequences of how Scotland interprets the UK Misuse of Drugs Act 1971**

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**Abstract**

Scotland prosecutes twice as many people for “dealing in drugs” compared to England and Wales and Northern Ireland. The explanation proposed is that the Scottish Police force is comparatively more successful at persuading courts that small quantities of drugs for personal use are intended for external supply. The police in Scotland have a network of specialist drug units in which officers make these decisions in the absence of benchmarks against which to judge quantities of repossessed drugs. Taking this approach, Scotland’s commitment to prohibition of drugs has resulted in some very curious differences in classifications of charges compared to other countries.

**Key words**: dealing, drugs, police, prosecution, Scotland, trafficking

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Scotland prosecutes twice as many people for “dealing in drugs” compared to England and Wales and Northern Ireland. The explanation proposed is that the Scottish Police force is comparatively more successful at persuading courts that small quantities of drugs for personal use are intended for external supply. The police in Scotland have a network of specialist drug units in which officers make these decisions in the absence of benchmarks against which to judge quantities of repossessed drugs. Taking this approach, Scotland’s commitment to prohibition of drugs has resulted in some very curious differences in classifications of charges compared to other countries.

Supporters of drug prohibition do not accept that drug taking can be unproblematic, with the head of United Nations Drug Programme (Antio Mario Costa) suggesting in a Mertonian analysis that implementation of drug policies were having unintended consequences (Costa, 2010). Research conducted by Robins *et al* (1977), Zinberg and Harding (1982), Blackwell (1983), Zinberg (1984), Shewan *et al* (1998), and Warburton *et al* (2005) indicate that the controlled use of opiates by users is not only possible but common practice. These authors assert the idea that drug users can purchase and control their drug stockpile, whilst continuing to live manageable lives. Additional research by Cohen and Sas (1993, 1995), Ditton and Hammersley (1994) and Descorte (2000) show that controlled use of cocaine and crack is also possible. While limitations in this literature could be argued, these researchers challenge the alternative view that experimenting with drugs inevitably leads to addiction (Werner & Riviere, 2007). International drug laws are based on temperance ideology, which views that all users are at risk of addiction given sufficient time and exposure to drugs (Yates, 1999; Leshner, 2000).

The key multilateral drug conventions that underpin drugs prohibition are: (1) the United Nations Single Convention on Narcotic Drugs (1961), (2) the United Nations Convention on Psychotropic Substances (1971), and (3) the United Nations Convention against the illicit traffic in Narcotic Drugs and Psychotropic substances (1988). These United Nations have dual aims: (a) the first is to control the use and trafficking of narcotics that are considered to have abuse potential, and the second (b) to assure that psychotropic drugs are made available for medical use and scientific research (Taylor, 2007). These international institutions have collective responsibility to implement these aims. They emphasise a strict prohibitionist and law enforcement approach to interpretation and enforcement.

The Misuse of Drugs Act (1971) is the United Kingdom’s primary legislation for controlling drugs. This act sets out the basis of drug enforcement policy in England and Wales, Northern Ireland and Scotland. In 2001, just two years after devolution, Scotland created a USA style Drug Enforcement Administration (DEA) and called it the Scottish Drug Enforcement Agency (SDEA), which was later renamed the Scottish Crime and Drugs Enforcement Agency (SCDEA). The aim of SCDEA is to address problems associated with drugs misuse. The Scottish Police Services Authority (SPSA), a Non-Departmental Public Body (NDPB), maintains the SCDEA and is accountable to Scottish Parliament. SCDEA are able to operate with a degree of autonomy using the following performance indicators:

(1) numbers of successful prosecutions, (2) ability to act as a deterrent, and (3) annual quantities of drugs seized. The measurement of drugs and street pricing is not used as a gauge when prosecuting an accused of being either a drug user or dealer.

**Economic and social costs of drug use in Scotland**

Based on the findings from a Home Office study on social and economic costs of drug misuse (Gordon *et al*, 2006), Audit Scotland estimated the economic and social costs of drug misuse to be £2.6 billion in 2003/04 (Audit Scotland, 2009). A further report commissioned by the Scottish Government published in 2009 estimated that the annual social and economic cost of illicit drug use was £3.5 billion in 2006 (Casey *et al*, 2009). Half of this £3.5 billion was the result of wider societal costs incurred from premature illness, death and related crime. An estimated 96% of these social and economic costs have been related to problematic drug use, with the remaining 4% ascribed to recreational use. The individual costs are £60,703 per problematic drug user and £134 per recreational drug user. Since implementation of the 1971 Misuse of Drugs Act there have been no discussions about drug policy reform implementation. In the interim, successive governments have affiliated their commitment to the acts drug prohibition approach. The prohibition of drugs through [legislation](http://en.wikipedia.org/wiki/Legislation) is a common means of attempting to prevent [drug use](http://en.wikipedia.org/wiki/Recreational_drug_use). Many governments do not criminalize the possession of a limited quantity of certain drugs for personal use, while still prohibiting their sale or manufacture, or possession in large quantities. Some laws set a specific volume of a particular drug, above which is considered to be evidence of trafficking or sale of the drug. This is not the case in Scotland.

The sterotypical treatment seeking problem drug user in Scotland is white, < 30 years old, unemployed, male, user of opiates who resides in a deprived neighbourhood. SThese service users consist of less than 0.1% of the overall population (Hay *et al*, 2001; Casey *et al*, 2009), which represents roughly 80% of the drug using populace (Brown & Bolling, 2007). In December 2010, the UK Government launched its new drug strategy titled “*Reducing demand, restricting supply, building recovery: supporting people to live a drug free life*”. In Scotland, the document named *Road to Recovery* (2008) was published by the SNP government. This document identified three broad categories of people who are not considered to be “drug free”. These groups include: *(1) experimenters, (2) regular users,* and *(3)* *problem drug users*. *Experimenters* and *regular users* consist of a wide range of social and demographic groups, whilst *problem drug users* are largely economically and socially deprived. This latter group predominately include drugs users who become imprisoned or receive treatment. The Scottish Government Minister for community safety (Fergus Ewing) argues against the notion that drug users do not incur physical, psychological and social problems (Road to Recovery, 2008). There are also consequences in terms of legal penalties associated with the Misuse of Drugs Act 1971. Ewing encapsulates his ideology in the subsequent statement:

“The scale of Scotland’s drug problem should be a concern to all of us.

Too many people are ruining their own lives and harming others around

them through the use of drugs. Although this is an issue that affects most societies

across the world, it is clear that Scotland’s problem is disproportionately serious”

(Road to Recovery, 2008, p. iv).

Ewing continues on the theme of need for change:

Since becoming Minister for Community Safety one year ago, I have had the

privilege of meeting many people working in the field. I have been struck by their

commitment and hard work. Many of them have told me that they want a new

vision for tackling drug use in Scotland, and a great many agree about what the

focus of that new vision should be. It is the job of Government to capture that

vision and consensus and then set out what needs to be done to turn it into

reality (Road to Recovery, 2008, p. iv).

Scotland prosecutes twice as many people for dealing in drugs than England and Wales. This paper proposes that Scotland’s commitment to prohibition has reduced the number of drug users and increased the number of dealers prosecuted, as a direct result of police indicators used and the way the law is implemented in Scotland. With the bulk of Scotland’s drug policy budget devoted to stifling the “supply of drugs”, it is impossible to determine whether “supply side enforcement” is effective given the current performance indicators used by Police. Potential source of a ruined life is stigmatisation of being ascribed the erroneous label of “drug dealer” as a direct result of inappropriate police classification.

**The numbers prosecuted for drug offences in the UK (2002 - 2009)**

Recorded drug crime in the UK by offence type and country can be viewed is *Table 1.* These figures have been assimilated from the UK Department of Health (Davies *et al*, 2010), The European Monitoring Centre for Drug Dependence and Addiction (EMCDDA, 2010), Flatley *et al* (2010), Kershaw *et al* (2008); PSNI (2006, 2008, 2010), and Walker *et al* (2009).

TABLE 1 HERE

From the data presented in *Table 2*, it is apparent that there are differences in the percentage of charged drug traffickers (dealers) between England and Wales, Northern Ireland and Scotland per head of population.

TABLE 2 HERE

Substantially more drug dealers were prosecuted per head of population in Scotland compared to England and Wales and Northern Ireland in 2007. One potential explanation for these different figures is that the Scottish Police force is comparatively more successful at persuading courts that small quantities of drugs for personal use are instead intended for external supply. The police in Scotland have a network of specialist drug units called STOP (STatement of OPinion), in which officers make these decisions. According to the STOP method, whether drugs are labelled as intended for personal use or external supply is based on unofficial benchmarks. To exemplify this point, in Portugal a 10 day drug supply is considered an amount for personal use, and anything over is prosecuted as a dealing offence (Greenwald, 2009). Such formal benchmarks are absent in Scotland.

Given that the general public do not regularly engage in purchasing illicit drugs, public ignorance about actual worth of drugs can be exploited. Bramley-Harker (2001) argues that price ascriptions ought to be treated with caution when street pricing has been used by the police as a performance indicator. The relationship between the user and supplier may be the more important determinant in pricing drug sales, with regular traders anticipating benefits in terms of reduced prices. It is important to identify that regular reliable and consistent customers decrease the dealer’s risk of report to the police, and so may incur favour in terms of payment terms (Bean & Wilkinson, 1987).

**How street drug prices are calculated**

The price of street drugs is based on estimates of what profit could potentially be realised from a specific amount. Acknowledging that there are regional price differences an example follows. Were a cocaine user to purchase a quarter ounce (approximately 7 grams) for £250, it is usual to anticipate a reduction in product quality due to cutting with inert industrial sugars or laxatives. The dealer’s goal is always to avoid what is lethal and could possibly eliminate the client. In contrast, were cocaine to be purchased in £40 individual gram packages, 7 grams would cost £280. Also, heroin is commonly purchased in eighth of an ounce packages (3.5 grams), which are purchased for roughly £100. Schemes of which are more economic than purchasing a £10 (0.1 gram deal) or £20 (0.2 gram deal). Using the latter calculation, a 3.5 gram score (one eighth of an ounce) could attain £350 if sold in 35 separate transactions. It is from these types of calculations that realisable values of street prices are calculated (Atha, 2010; McPhee *et al*, 2009).

The point made illustrates how regular users incur better deals when they purchase larger amounts of drugs from traffickers. Such transactions encounter the risk of being caught in possession of a sizable batch of drugs for personal consumption, which could potentially be labelled by the police as intended for outward sale. Misidentification as a dealer may be one explanation for higher numbers of trafficking prosecutions in Scotland. Akin to Portugal, creating official classifications of acceptable amounts of drugs for personal use and beyond for dealing could narrow differences in the numbers of prosecutions for drug dealing between England and Wales, Northern Ireland and Scotland. Reliance on crude indicators for conviction has fostered a view that police have limited rational justification for labelling some drug users as dealers. Cynicism about the true culture of street pricing and drug purchasing in terms of quantity of drugs seized and personal usage requires both objective and subjective evaluation for figures to be of real use to policy makers, police, government and health and social care professionals.

**Conclusion**

Over the past five decades, drug prohibition has primarily been a politically driven policy. This politicisation has skewed drug research towards demonstrating harm to justify punitive responses to “drug threat”. Popular support for drug prohibition is rooted in 20th century faith in the capacity of the state to control many aspects of daily life for common good (Levine, 2001). Levine (2001) considers that drug prohibition exists to exert power over individuals and subordinate groups:

“Drug prohibition is a worldwide system of state power. Global drug prohibition

is a “social fact”; it is a “thing” (to use the terms of the great sociologist Emile

Durkheim). Drug prohibition exists whether or not we recognise it, and it has real

effects, real consequences” (Levine, 2001, p 6).

Defining drug use as criminal, anti social or pathological has become a political act. The interpretive process is not only opinionated, it also generates competing systems of knowledge concerning relations between institutions. Outcomes may amplify discrimination and prejudice of drug users through inappropriate labelling as a dealer by police, authorities, media, politicians, treatment providers, the medical profession, academic institutions and users themselves. The debate is not just about drugs, where chemicals meet receptor sites, it is also about who holds legitimate power to disseminate a restricted analysis that renders powerlessness to those who challenge the dominant discourse. Social constructionist theories reveal a lack of substance to themes that are capable of fuelling moral panic (Young, 1971; Hall *et al,* 1978; Cohen, 1980). These writers centre on representations of crime that manufacture ideologically dominant perspectives. Such dominant discourse challenges the power of social and structural factors that influence outcomes for individual actors. Encased in this view, is the idea that government policy explains crime in a way that denies acceptable relationships between core structures and society values. Societal response to any deviant activity is not to focus on the impact of policy on drug related harm, but to support criminal laws to deter and punish infringements of social behaviours deemed inappropriate, dangerous and immoral. As such, Scotland’s commitment to prohibition of drug use has resulted in some very curious differences in numbers of convictions for drug dealing in comparison to other countries.

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**Table 1:** Recorded drug crime in the UK by offence type and country

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Year**  **2002/03 2003/04 2004/05 2005/06 2006/07 2007/08 2008/09** | | | | | | | |
|  | | | | | | | |
| England and Wales | | | | | | | |
| Trafficking\* | 22,435 | 24,628 | 24,190 | 25,275 | 26,550 | 28,130 | 29,644 |
| Possession | 119,896 | 118,006 | 120,866 | 152,602 | 167,003 | 200,019 | 212,150 |
| Other drug offences\*\* | 989 | 877 | 781 | 601 | 680 | 809 | 1,113 |
| Total offences | 143,320 | 143,511 | 145,837 | 178,479 | 194,223 | 228,958 | 242,907 |
| **Northern Ireland** | | | | | | | |
| Trafficking | 291 | 405 | 375 | 349 | 473 | 529 | 607 |
| Possession | 1,633 | 2,184 | 2,247 | 2,595 | 1,938 | 2,191 | 2,367 |
| Total offences | 1,924 | 2,589 | 2,622 | 2,944 | 2,411 | 2,720 | 2,974 |
| Scotland |  |  |  |  |  |  |  |
| Trafficking | 10,148 | 9,537 | 9,333 | 9,613 | 10,890 | 9,827 | 10,315 |
| Possession | 30,510 | 32,463 | 32,268 | 34,440 | 31,329 | 30,559 | 31,805 |
| Other drug offences\*\*\* | 280 | 275 | 222 | 194 | 203 | 360 | 389 |
| Total offences | 40,939 | 42,275 | 41,823 | 44,247 | 42,422 | 40,746 | 42,509 |
| United Kingdom |  |  |  |  |  |  |  |
| Trafficking | 32,874 | 34,570 | 33,898 | 35,238 | 37,913 | 38,486 | 40,566 |
| Possession | 152,039 | 152,653 | 155,381 | 189,637 | 200,270 | 232,769 | 246,322 |
| Other drug offences | 1,269 | 1,152 | 1,003 | 795 | 883 | 1,169 | 1,502 |
| Total offences | 186,182 | 188,375 | 190,282 | 225,670 | 239,066 | 272,424 | 288,390 |

\* Trafficking usually includes production, supply, possession with intent to supply, possession on a ship, carrying on a ship and unlawful

import and export.

\*\* For England and Wales ‘other drug offences’ mainly concerns permitting premises to be used for the production, supply and use of

drugs.

\*\*\* For Scotland ‘other drug offences’ includes production and manufacture of drugs (not illegal cultivation), money laundering related

offences and other drugs offences not designated as trafficking or possession.

**Table 2.** Percentage of drug dealers per head of population in the UK in 2007

Country Population Traffickers % drug dealers

(million) (dealers)

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England & Wales 54.1 28, 130 0.00052

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Northern Ireland 1.8 529 0.00029

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Scotland 5.1 9, 827 0.00193

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\* Population figures taken from (Barlow, 2011)

\*\*Drug trafficker (dealer) figures taken from Table 1

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